Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
National Exchange Carrier Association, Inc.	)	WC Docket No. 06-223
Proposed 2007 Modification of Average	)	
Schedule Formulas	)	

COMMENTS OF AT&T INC.[1]

Pursuant to the Commission's January 29, 2007 *Public Notice* (DA 07-306),[2] AT&T Inc. ("AT&T") submits these comments on the National Exchange Carrier Association, Inc. ("NECA") proposed modifications to the current interstate average schedule formulas, filed on December 21, 2006.[3] These modifications are proposed to be effective for the period July 1, 2007 through June 30, 2008.

NECA's own analysis shows that common line and traffic sensitive interstate access costs have declined significantly from the prior period, which should produce a decline in average schedule settlements of about 7.27 percent. However, NECA notes that some average schedule companies have expressed concerns that reduced settlement payments that reflect these declines in cost will adversely impact their business operations.[4] NECA therefore proposes to provide "transition payments" amounting to

[1] On November 18, 2005, SBC Communications Inc. closed on its merger with AT&T Corp. The resulting company is now known as AT&T Inc. On December 29, 2006, AT&T Inc. closed on its merger with BellSouth Corporation. In these comments, "AT&T" refers to the merged company and its wholly-owned subsidiaries unless otherwise noted.

[2] Public Notice, "National Exchange Carrier Associating, Inc's Proposed 2007 Modification of Average Schedule Formulas," DA 07-306 (rel. Jan. 29. 2007) ("*Public Notice*"). Because the Commission's offices closed prior to 5:30 PM on February 13, 2007, pursuant to Section 1.4(e)(1) of the Commission's rules (47 C.F.R. § 1.4(e)(1)), AT&T is filing these comments on February 14.

[3] 2007 NECA Modification of Average Schedules, National Exchange Carrier Association, Inc., filed. December 21, 2006 ("NECA December 21 Filing").

[4] For example, NECA lists various LEC concerns that include "restrictions on future business plans if impacts on a company's cash flow causes a lender to modify the terms of a loan covenant, and the possible inability of a carrier to meet existing loan commitments". NECA December 21 Filing, p. VII-67.

$33.63 million to a very large number of study areas, despite the fact that such payments are concededly unrelated to the cost of providing interstate access services.[5]

NECA acknowledges that, if its proposal is adopted, $24.89 million in transition payments will be disbursed in the settlement year which begins in July, 2007, and the remaining $8.74 million would be paid in the following year.[6] By proposing the payments in the first year of its "transition," the proposed reduction in average schedule settlements will be reduced to, *at most*, only one half of the 7.27 percent cost reduction described by NECA.[7]

Pursuant to Section 69.606(a) of the Commission's rules (47 C.F.R. § 69.606(a)), NECA's proposed average schedule formulas are intended to simulate the disbursements that would be received by representative cost companies. Instead, the apparent purpose and clear effect of these transition payments is to inflate the proposed average schedule settlements in a large number of service areas where the cost of providing service is below the payments NECA proposes to provide to these companies.[8]

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5 NECA lists the study areas that will receive these transition payments in Appendix E of its December 21 Filing. NECA is proposing that approximately 340 study areas of the 470 average schedule companies in the pool – i.e., *nearly 70 percent of the total* -- will receive transition payments.

6 NECA December 21 Filing, p. VII-68.

7 It is not clear that NECA's proposed transition proposal will *ever* result in an access settlement reduction of 7.27 percent. This is because NECA also included a transition mechanism in its 2006 modification of average schedule formulas. The transition amount included $13.92 million for the period beginning on July 1, 2006 and $4.89 million for the year that would appear to begin July 1, 2007. It is AT&T's understanding that NECA intends to include the second year of last year's transition amount of $4.89 million in its 2007 settlement amounts; thereby resulting in total transition payments that approach $30 million Rather than propose that the 2008 settlements be reduced or simply increased to reflect the then current cost of service, the combined effect of NECA's prior and current transition proposals appears to insure that settlements will include $8.74 million in transition payments that are completely unrelated to the average schedule formulae for the settlement year beginning July 2008.

8 Notably, NECA does not provide evidence that the companies to which it proposes to provide transition payments do not *already* receive settlements that are far in excess of their cost to provide service. For example, NECA in its 2006 modification of Average Schedule filing at Appendix E shows that study area code 351309 could expect to be paid $188,382 per month and a transition payment was not required. One year later this same study area is shown to have costs that total $148,992, but under NECA's proposal would receive $26,123 per month in transition payments.

The inclusion of NECA's proposed transition payments in access settlements and subsequently in rates is likewise a clear violation of the Commissions rate of return prescription order requiring that rates be set to achieve an 11.25 percent rate of return.[9] The average schedule formulae recovering the cost of providing interstate services already reflect the Commission's authorized rate of return. NECA expressly acknowledges that "[r]evenue [r]equirements were computed for each access category and Transport element for sample study areas in accordance with the Commission's Part 65 rules."[10] Further the Return formula shown and described on Page VI – 13 of the NECA filing demonstrates that a return on investment of 11.25 percent has been included in each access category and Transport subcategories. By subsequently adding a transition payment to revenue requirements that already include the prescribed return, the NECA proposal will necessarily be targeted to produce returns that violate the Commission's Part 65 rules.

Even if the transition payments that either are currently embedded or are proposed to be embedded in the average schedule formulas were not facially inconsistent with the Commission's rate of return prescription, the Commission should not sanction hidden subsidies in the average schedule settlement process such as NECA is proposing here. The recovery of transition payments in excess of a local exchange carrier's calculated cost is indisputably an implicit subsidy because the incumbent LEC's transition payment is not directly related to the cost of providing access service to IXCs. Rather, the transition payment will be recovered from IXCs through access charges. The Fifth

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9 *See Represcribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, CC Docket 89-624, Order, 5 FCC Rcd 7507 (1990).

10 NECA December 21 Filing, p. VI - 13.

Circuit unequivocally held in its 2001 *Comsat* decision that all implicit subsidies must be removed from access charges.[11] The *Comsat* court relied on its earlier ruling in *TOPUC*,[12] which held that "the plain language of § 254(e) does not permit the FCC to maintain any implicit subsidies." The recovery of transition payments by adding them to the settlement formulas constitutes an impermissible implicit subsidy in violation of these controlling court rulings.

CONCLUSION

For the reasons stated above, the Commission should require NECA to remove all embedded transition payments from its average schedule settlement formulas. In the event the Commission allows NECA to include any portion of these transition payments in the settlement mechanism, it should require that these transitional payments be returned to ratepayers, with interest, through rate reductions in the years immediately following the period of the transition payment. In any event, the Commission should require that NECA, as part of its 2007 annual filing, conclusively demonstrate that it has completely excluded existing transition amounts from the rate setting process.

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11 *Comsat Corp. v. FCC*, 250 F.3d 931 (5th Cir. 2001). ("Comsat")

12 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 425 (5th Cir. 1999) ("*TOPUC*")

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Hagi Asfaw, hereby certify that on this 14th day of February 2007, a copy of the foregoing Comments of AT&T Inc. was served via electronic mail to the parties listed below:

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